United Nations A/AC.254/4/Add.3/Rev.6

General Assembly

Distr.: General
4 April 2000

Original: English

Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime

Ninth session
Vienna, 5-16 June 2000
Item 3 of the provisional agenda*
Consideration of the additional international legal instrument against trafficking in persons, especially women and children

Revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime[1]

The States Parties[2] *to this Protocol,*

Taking note of the United Nations Convention against Transnational Organized Crime (hereinafter referred to as "the Convention"),

Gravely concerned by the significant and increasing activities of transnational criminal organizations and others that profit from international trafficking in persons,

Believing that women and children are particularly vulnerable to and targeted by transnational criminal organizations engaged in trafficking in persons,

Declaring that effective action to combat international trafficking in persons, especially women and children, requires a comprehensive, international approach in the countries of origin, transit and destination that includes measures to prevent such international trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the sexual exploitation of

* A/AC.254/29.

1 This version of the draft Protocol is based on the restructured draft submitted by the delegations of Belgium, Poland and the United States of America at the fifth session of the Ad Hoc Committee (see A/AC.254/5/Add.13).

2 At the sixth session of the Ad Hoc Committee, delegations noted that the words "each State Party" and "States Parties" were used interchangeably throughout the text of the draft Protocol. It was agreed to use the words "States Parties".

women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, *inter alia*, an international instrument addressing trafficking in women and children,

Convinced that supplementing the Convention with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in combating that crime,

Taking into account the provisions of the Convention,[3]

Have agreed as follows:

I. Purpose, scope and criminal sanctions

Article 1

Purpose[4]

The purpose of this Protocol is to prevent and combat [international][5] trafficking in persons, paying particular attention to the protection of women and children, who are so often the victims of such trafficking,[6] and to promote and facilitate cooperation among States Parties to meet these objectives.[7]

---

[3] Two delegations noted that the draft Protocol should also take into account recent and ongoing work in other international forums (i.e. the work in connection with the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, adopted on 17 June 1999 by the General Conference of the International Labour Organization (ILO), and the draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (see A/AC.254/5/Add.3) and the report of the open-ended inter-sessional working group on a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography on its fifth session, held in Geneva from 25 January to 5 February 1999 (E/CN.4/1999/74)). Two other delegations suggested that reference should be made in the preamble to the draft Protocol to relevant conventions.

[4] At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on adopting this new text as a basis for discussion and on deleting options 1 and 2 of this article contained in the previous text (see A/AC.254/4/Add.3/Rev.5 of the draft Protocol). Some delegations suggested reversing the order of the sentence, moving the words "promotion and facilitation of cooperation" to the beginning.

[5] At the informal consultations held during the seventh session of the Ad Hoc Committee, discussion of whether to include the word "international" was deferred pending finalization of the corresponding provisions in the draft Convention.

[6] At the informal consultations held during the seventh session of the Ad Hoc Committee, one delegation suggested that the words "women and children who are so often the victims of such trafficking", should be moved to the preamble.

[7] At the informal consultations held during the seventh session of the Ad Hoc Committee, some delegations suggested that this article should distinguish between the purposes of this Protocol and the draft Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime (the "Migrants Protocol"). One delegation suggested adding the words "all forms of exploitation".

Article 2

Scope of application

This Protocol shall, except as otherwise provided herein, apply to the prevention and combating, as well as the protection of victims of, [international][8] trafficking in persons as defined in article 2 *bis* of this Protocol and [, when involving an organized criminal group,][9] as defined in article [...] of the Convention.[10]

Article 2 bis

Definitions

Option 1

For the purpose of this Protocol, the following definitions shall apply:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, either by the threat or use of abduction, force, fraud, deception or coercion,[11] or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person [, with the aim of submitting them to any form of exploitation, as specified in article [...] of this Protocol];[12]

(b) "Sexual exploitation"[13] shall mean:

---

[8] At the informal consultations held during the fifth session of the Ad Hoc Committee, there was general agreement on inserting the word "international" in brackets in this paragraph. Many delegations were in favour of inserting the word in order to bring the scope of this draft Protocol in line with that of the draft Convention. However, some delegations expressed the view that the Protocol should protect all persons and that the inclusion of the word would make its scope too limited. Several delegations also expressed the view that the term "international trafficking" should be defined in order to clarify what situations would be covered under the Protocol. At the informal consultations held during the seventh session of the Ad Hoc Committee, a similar discussion ensued and there was general agreement on deferring the discussion of the matter pending finalization of the corresponding provisions in the draft Convention.

[9] At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on deferring discussion of the words in brackets pending finalization of the corresponding provisions in the draft Convention.

[10] At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on adopting this new text proposed by the United States (see A/AC.254/5/Add.19) as a basis for discussion and on deleting options 1 and 2 of the previous text (see A/AC.254/4/Add.3/Rev.5). It was also agreed that the text of former article 2, paragraph 2, which defined "trafficking in persons", should be moved to article 2 *bis* of the draft Protocol.

[11] At the second session of the Ad Hoc Committee, one delegation expressed concern that it would be difficult to prove "coercion" in practice. At the second and fifth sessions of the Ad Hoc Committee, one delegation suggested the insertion of the words "or debt bondage" between the words "coercion" and "or". Several delegations suggested that it was covered under the term "forced labour". Several other delegations suggested that it could be covered under another term defined in the draft Protocol. There was no objection to the subject of debt bondage being covered under the draft Protocol.

[12] At the informal consultations held during the fifth session of the Ad Hoc Committee, there was general agreement on replacing the words "for the purpose of sexual exploitation or forced labour" with these words in brackets. This paragraph has been moved from article 2 on the basis of a recommendation of the informal consultations held during the seventh session of the Ad Hoc Committee.

[13] The discussion on the definition of "sexual exploitation" at the informal consultations held during the fifth session of the Ad Hoc Committee was based on the proposal submitted by the United States (A/AC.254/L.54). Two delegations expressed reservations regarding the proposal. The Netherlands suggested replacing the definition of the term "sexual exploitation" with a definition of the term "slavery" that reads as follows: "Slavery shall mean the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."

(i) Of an adult, [forced][14] prostitution, sexual servitude or participation in the production of pornographic materials, for which the person does not offer himself or herself with free and informed consent;[15]

(ii) Of a child, prostitution, sexual servitude or use of a child in pornography;[16, 17]

(c) "Forced labour"[18] shall mean all work or service extracted from any person under the threat [or] [,] use of force [or coercion],[19] and for which the person does not offer himself or herself with free and informed consent [, except:

(i) In countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(ii) Any work or service not referred to in subparagraph (b) (i) of this article that is normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;

(iii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iv) Any service extracted in cases of emergency or calamity threatening the life or well-being of the community;

(v) Any work or service that forms part of normal civil obligations of the State concerned; or

---

powers attaching to the right of ownership are exercised."

[14] At the informal consultations held during the fifth session of the Ad Hoc Committee, a majority of delegations suggested deleting the word "forced". Several delegations also noted that it might be difficult for victims of prostitution to prove that they had been "forced". However, several delegations expressed the view that it was essential to distinguish the victims of prostitution from those who had chosen to engage in prostitution.

[15] The proposal by the United States (A/AC.254/L.54) contained the words "for which the person does not offer herself or himself voluntarily", which was based on the wording in the Convention Concerning Forced or Compulsory Labour (ILO Convention No. 29), article 2, paragraph 1. At the informal consultations held during the fifth session of the Ad Hoc Committee, consensus was reached on recommending the replacement of the word "voluntarily" with the words "with free and informed consent".

[16] At the informal consultations held during the fifth session of the Ad Hoc Committee, one delegation suggested that the subject of paedophilia should be covered by the definition of the term "sexual exploitation". Alternatively, the subject of paedophilia could be included in a definition of the term "sexual servitude". The delegation suggested that the draft Protocol should take into account the work being done on the draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

[17] Prior to the fifth session of the Ad Hoc Committee, some delegations suggested that there was a need to refer to "profit" as an element of trafficking in persons for the purpose of sexual exploitation. Other delegations had expressed the view that an explicit reference to profit was unnecessary and that the draft Protocol should cover crime committed for its own sake. At the informal consultations held during the fifth session of the Ad Hoc Committee, one delegation suggested again that there was a need to refer to profit as an element of trafficking in persons for the purpose of sexual exploitation.

[18] The discussion on the definition of the term "forced labour" at the informal consultations held during the fifth session of the Ad Hoc Committee was based on the proposal by the United States (A/AC.254/L.54).

[19] At the informal consultations held during the fifth session of the Ad Hoc Committee, several delegations suggested including the word "coercion", which in their view was a broader term than "force". Several delegations expressed reservations regarding the inclusion of the word "coercion".

(vi) Minor communal services of a kind that, being performed by the members of a community in the direct interest of that community, can therefore be considered normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives have the right to be consulted with regard to the need for such services].[20]

Option 2[21]

For the purpose of this Protocol:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by the threat or use of force, by abduction, fraud, deception, coercion or the abuse of power or by the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of [at a minimum][22] slavery, forced labour or servitude, including through sexual exploitation;[23]

(b) "Slavery" shall mean the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised;[24]

(c) "Forced labour"[25] shall mean labour or services obtained through force or the threat of force, or the use of coercion, or through any scheme or artifice to defraud, including one where the status or condition results from a debt or contract made by that person and the value of the labour or services as reasonably assessed is not applied towards the liquidation of the debt or the fulfilment of the contract (i.e. debt bondage), or by any means or plan or pattern, including but not limited to false and fraudulent pretenses and misrepresentations, such that the person reasonably believes that he or she has no alternative but to perform the service;

---

[20] Both the International Covenant on Civil and Political Rights and ILO Convention No. 29 specify exceptions to what is considered forced labour. Subparagraphs (b) (i)-(v) of the proposed text are virtually identical to article 8, paragraphs 3 (b) and (c), of the International Covenant on Civil and Political Rights, which may provide a clearer and more up-to-date standard than ILO Convention No. 29. Subparagraph (b) (vi) is taken from article 2, paragraph 2 (e), of ILO Convention No. 29. Further consideration should be given to deciding whether it would be useful to include any exceptions to the term "forced labour", in particular if "trafficking in persons ... for the purpose of forced labour" is linked to the activities of an organized criminal group. At the informal consultations held during the fifth session of the Ad Hoc Committee, no general agreement was reached on whether to retain these exceptions or not. Several delegations suggested deferring the question concerning these exceptions to the national legislation of the States Parties to the Protocol. It was agreed to recommend keeping the exceptions in brackets for further discussion.

[21] This option is based on the first of two texts proposed by the informal working group convened at the request of the Chairperson during the informal consultations held at the seventh session of the Ad Hoc Committee. Footnotes 22-26 below were drafted by the informal working group.

[22] All States Parties would be required to criminalize trafficking for the purposes specified in the Protocol. Two delegations wanted to ensure that the Protocol would cover trafficking for other purposes, such as illegal adoption and trafficking in body organs.

[23] The informal working group concluded that there was no need to define the term "sexual exploitation" when used in this context.

[24] This language is from the Slavery Convention, signed at Geneva on 25 September 1926.

[25] One delegation proposed adding the words "debt bondage" to the definition of "forced labour" contained in the previous text (A/AC.254/4/Add.3/Rev.5).

(d) "Servitude" shall mean the status or condition of dependency of a person who is [unjustifiably] compelled by another person to render any service and who reasonably believes that he or she has no alternative but to perform the service;

(e) "Trafficking in persons" shall include recruitment, transportation, transfer, harbouring or receipt of any child,[26] or giving of payments or benefits to achieve the consent of a person having control of a child, for the purpose of slavery, forced labour or servitude or for the purpose of using, procuring or offering a child for prostitution, for the production of pornography or for pornographic performances;

(f) "Child" shall mean any person under 18 years of age.

Option 3[27]

For the purpose of this Protocol, "trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by the threat or use of force or abduction, or by fraud, deception, [inducement,][28] coercion [or the abuse of authority][29] [, or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person],[30] for the purpose of exploitation. Exploitation shall include, at a minimum,[31] sexual exploitation, forced labour or services, and debt bondage.[32]

---

[26] Several delegations supported having a clear reference to trafficking in children for the purposes of prostitution, pornography and pornographic performances. This language follows the language of the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. An alternative way to criminalize trafficking in children might be to state that children could not consent to certain activities. One delegation, however, expressed concern that using a consent exception for some purposes could imply that consent could be given for other purposes. Several delegations also expressed concern that a consent exception for children would suggest that adults could consent to slavery, forced labour or servitude when, in fact, no person should consent to slavery, forced labour or servitude. The current text in paragraph (e) avoids this confusion by not using the word "consent".

[27] This option is based on the second of two texts proposed by the informal working group convened at the request of the Chairperson during the informal consultations held at the seventh session of the Ad Hoc Committee. Footnotes 28-32 below were drafted by the informal working group.

[28] The word "inducement" was put in brackets because of a disagreement on its exact meaning. In addition, there was also disagreement on whether the word implied an element of force or coercion.

[29] The words "abuse of authority" were placed in brackets because the exact meaning of the word "authority" was disputed. The word "authority" should be understood to include the power that male family members might have over female family members in some legal systems and the power that parents might have over their children.

[30] The words "or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person" were placed in brackets because some delegations were of the opinion that this would be covered by the other qualifiers, that is, force, fraud, deception, coercion and inducement.

[31] The words "at a minimum" will allow States Parties to go beyond the offences listed in this definition in criminalizing. It is also intended to make it possible for the Protocol to cover future forms of exploitation (i.e. forms of exploitation that are not yet known).

[32] One delegation suggested changing the order of words, so that it would read as follows: "'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, for the purpose of exploitation, by the threat or use of force or abduction, or by fraud, deception, [inducement,] coercion [or abuse of authority] [, or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person]. Exploitation shall include, at a minimum, sexual exploitation, forced labour or services, and debt bondage."

Article 3

Obligation to criminalize[33]

1. States Parties shall adopt such measures as may be necessary to establish as criminal offences under their domestic law the conduct set forth in article 2 *bis*[34] of this Protocol and shall impose penalties that take into account the grave nature of those offences.

2. States Parties shall also adopt such measures as may be necessary to establish as criminal offences under their domestic law the following conduct and shall impose penalties that take into account the grave nature of those offences:[35]

(a) Attempting to commit an offence set forth in article 2 *bis* of this Protocol;

(b) Participating as an accomplice in the commission of an offence set forth in article 2 *bis* of this Protocol;

(c) Organizing or directing others to commit an offence set forth in article 2 *bis* of this Protocol; or

(d) In any other way contributing to the commission, by a group of persons acting with a common purpose, of an offence set forth in article 2 *bis* of this Protocol; such contribution shall be intentional and shall either be made with the aim of furthering the general criminal activity or criminal purpose of the group or be made in the knowledge of the intention of the group to commit the offence concerned.

3. The knowledge, intent or purpose required to commit an offence set forth in article 2 *bis* of this Protocol may be inferred from objective factual circumstances.[36]

---

[33] At the fourth session of the Ad Hoc Committee, several delegations suggested that this article should be consistent with the relevant articles of the draft Convention and in the draft Migrants Protocol.

[34] At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on deleting the brackets throughout the text of this article.

[35] At the informal consultations held during the seventh session of the Ad Hoc Committee, it was recommended that further discussion of paragraphs 2 and 3 of this article should be deferred pending finalization of the corresponding provisions of the draft Convention.

[36] At the fourth session of the Ad Hoc Committee, some delegations suggested that this subparagraph should be deleted, while others stated that it should be retained as the wording was used in the 1988 Convention.

II. Protection of trafficked persons

Article 4[37]

Assistance for and protection of victims of trafficking in persons[38]

1. In appropriate cases and to the extent possible under domestic law, States Parties shall protect the privacy [and identity][39] of victims of crimes[40] covered by this Protocol by making legal proceedings relating to trafficking in persons confidential.[41]

2. States Parties shall ensure that their legislative or administrative[42] frameworks contain measures that permit providing to victims of crimes covered by this Protocol, in appropriate cases:[43]

(a) Information on the relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of the criminal proceedings against the offenders, in a manner not prejudicial to the rights of the defence.

---

[37] At the fourth session of the Ad Hoc Committee, some delegations proposed additional provisions regarding the protection of victims of trafficking. Italy proposed amendments to articles 4 and 5 (see A/AC.254/L.30) and the inclusion of a non-discrimination clause under new article 3 *bis*. The Holy See also proposed additional language for article 4 (see A/AC.254/L.32).

[38] Article 4 in document A/AC.254/4/Add.3, dealing with victims, was expanded into four separate articles (articles 4-7) in the version contained in document A/AC.254/4/Add.3/Rev.4, each addressing a different aspect of victim assistance. At the fourth session of the Ad Hoc Committee, some delegations reiterated their commitment to maintain a balance between providing protection and assistance for trafficked persons on the one hand and law enforcement on the other.

[39] At the informal consultations held during the seventh session of the Ad Hoc Committee, some delegations proposed that specific reference be made to protecting victims' identities. Other delegations expressed concerns that this would not be consistent with the right of accused persons to know the identity of their accusers or to mount a defence against criminal charges.

[40] At the informal consultations held during the seventh session of the Ad Hoc Committee, some delegations proposed that the words "victims" and "victims of crimes covered by this Protocol" appearing in various places in the text be replaced by the words "trafficked persons". One delegation noted that the word "victims" might be interpreted as a reference to persons having the legal status of victims, whereas the term "trafficked persons" was broader and more inclusive.

[41] At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement that the words "in appropriate cases and to the extent possible" should be retained without brackets and that the words "making legal proceedings relating to trafficking in persons confidential" should be inserted at the end of the sentence to emphasize that open public legal proceedings were the norm but confidentiality should be applied to protect victims in appropriate cases.

[42] At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement that a reference to administrative frameworks should be included to allow for non-legislative compliance with this requirement.

[43] At the fourth session of the Ad Hoc Committee, some delegations from developing countries expressed concern that the economic situation in their countries might make it difficult for their Governments to implement some of these provisions. At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement that article 4, paragraph 2, of the previous text should be divided into two separate subparagraphs, the first containing former subparagraphs (a) and (b) and the second containing former paragraphs (c) and (d). It was also agreed that the reference to victims should be moved from subparagraphs (a) and (b) to the chapeau of paragraph 2. Some delegations suggested that this provision might raise issues regarding the federal or regional division of powers for some countries and that it was linked to similar issues that were under discussion in the draft Convention.

3. In appropriate cases and to the extent possible, States Parties shall consider implementing measures to provide for the physical and psychological recovery of victims covered by this Protocol and in, particular:

(a) Appropriate housing;

(b) Counselling and information, in the language that the trafficked persons can understand, in particular as regards their legal rights;

(c) Medical, psychological and economic assistance; and

(d) Employment, educational and training opportunities.[44]

4. States Parties shall take into account, in applying the provisions of this article, the special requirements of children, including appropriate housing, education and care.[45]

5. States Parties shall endeavour to provide for the physical safety of victims of crimes covered by this Protocol while they are within their territories.[46]

6. States Parties shall ensure that their legislative framework provides for measures that offer victims of trafficking in persons the possibility of[47] obtaining compensation for damage suffered.[48, 49]

Article 5

Status[50] of the victim in the receiving State

1. In addition to measures provided pursuant to article 4 of this Protocol, States Parties shall [consider][51] adopting legislative or other appropriate measures that permit

[44] At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement that subparagraphs (a) and (b), which were subparagraphs (c) and (d) of article 2 in the previous text (A/AC.254/4/Add.3/Rev.5), should be incorporated into a separate paragraph of a non-obligatory nature and that further amendments should be included as new subparagraphs (c) and (d). Some delegations suggested that a reference to essential medical care should be made in paragraph 2, the obligatory provision.

[45] At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement that this new paragraph should be added.

[46] At the informal consultations held during the seventh session of the Ad Hoc Committee, one delegation suggested that this paragraph should read "States Parties shall cooperate with each other ...". Another delegation suggested deleting this paragraph because it was unclear whether it would apply to victims only while they were involved in legal proceedings or for the entire duration of their stay in the receiving State.

[47] At the informal consultations held during the seventh session of the Ad Hoc Committee, one delegation suggested deleting the words "the possibility of" to make this paragraph obligatory. Other delegations, however, suggested inserting the words "to the extent possible" in this paragraph.

[48] At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on using the text proposed by France as the basis for this paragraph. There was also general agreement that references to specific compensation methods in the previous text (A/AC.254/Add.3/Rev.5) should be replaced with a more general requirement that domestic law provide victims with the means of seeking compensation.

[49] At the informal consultations held during the seventh session of the Ad Hoc Committee, China suggested adding a new paragraph to this article (see A/AC.254/5/Add.19).

[50] At the informal consultations held during the seventh session of the Ad Hoc Committee, a majority of delegations expressed a preference for using the word "status" rather than the word "situation" in the title of this article.

[51] At the fourth session of the Ad Hoc Committee, several delegations suggested more obligatory language such as "shall consider" or "shall enact". At the informal consultations held during the seventh session of the Ad Hoc Committee, there was no agreement on whether this paragraph should be obligatory or not.

victims of trafficking in persons[52] to remain in their territories, temporarily or permanently, in appropriate cases.[53]

2. In implementing the provision contained in paragraph 1 of this article,[54] States Parties shall give appropriate consideration to humanitarian and compassionate factors.[55, 56]

Article 5 bis[57]

Seizure and confiscation of gains

States Parties shall take all necessary and appropriate measures to allow the seizure and confiscation of gains obtained by the criminal organizations from the offences covered by this Protocol. The proceeds from such seizure and confiscation shall be used to defray the costs of providing due assistance to the victim, where deemed appropriate by States Parties and as agreed by them, in conformity with individual guarantees enshrined in their domestic legislation.

---

[52] At the informal consultations held during the seventh session of the Ad Hoc Committee, some delegations suggested inserting the words "to apply" after the word "person" in order to show that the right to remain in their territory was not automatically conferred on trafficked persons. A majority of delegations opposed this proposal, stating that a procedure indicating a necessary step for such persons to apply to remain in the territory was encompassed by the words "other appropriate measures" in the second line of this paragraph. The delegations acknowledged that it was not the intention of this paragraph to confer the right to remain, but that the decision whether or not to grant temporary or permanent residence was always at the discretion of the State Party.

[53] At the fourth session of the Ad Hoc Committee, some delegations proposed to delete the words "in appropriate cases", while others suggested inserting those words before the word "permanently". At the informal consultations held during the seventh session of the Ad Hoc Committee, one delegation suggested placing those words after the word "persons".

[54] At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement that this phrase should be added at the beginning of this paragraph in order to establish a link with paragraph 1.

[55] At the informal consultations held during the seventh session of the Ad Hoc Committee, Canada, supported by many delegations, expressed the view that the words "compassionate factors" meant personal circumstances such as family situation, age, common-law relationship and other factors that should be considered on an individual and case-by-case basis. "Humanitarian factor", on the other hand, were the rights established in the human rights instruments and were applicable to all persons.

[56] At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on deleting the words "in determining the status of victims in their territories when they are the receiving State Party", which has appeared at the end of this paragraph in the previous text (A/AC.254/4/Add.3/Rev.5).

[57] The text of this article was proposed by Argentina at the second session of the Ad Hoc Committee (see A/AC.254/L.17). At the fourth session of the Ad Hoc Committee, a majority of delegations suggested deleting this article. At the sixth session, several delegations opposed the deletion of this article in the restructured text (see A/AC.254/5/Add.13). At the informal consultations held during the seventh session of the Ad Hoc Committee, discussion on this article was deferred pending the finalization of the articles dealing with confiscation (articles 7, 7 *bis* and 7 *ter*) in the draft Convention.

Article 6[58]

Repatriation[59] *of victims*[60] *of trafficking in persons*

1. Each State Party agrees to facilitate and accept, without delay,[61] the return of a victim of trafficking in persons[62] who is a national of that State Party or who had the right of abode[63] in the territory of that State Party at the time of entry into the receiving State.[64, 65]

2. At the request of a State Party that is the receiving State, each State Party shall, without [undue or unreasonable][66] delay, verify whether a person who is a victim of such trafficking is a national of the requested State.

3. States Parties shall, at the request of another State Party and subject to the domestic laws of the requested State Party, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in the name of the requested State Party and suspected of being used for trafficking in persons.[67]

---

[58] Two delegations suggested that several articles in this Protocol should be based on articles contained in the proposals of Canada and the United States regarding the draft Migrants Protocol. The articles of this Protocol thus adapted are articles 6, 8, 9 and 14.

[59] At the fourth session of the Ad Hoc Committee, a majority of delegations suggested replacing the word "return" with the word "repatriation".

[60] At the fourth session of the Ad Hoc Committee, some delegations suggested that the word "victims" should be replaced with the words "trafficked persons".

[61] At the fourth session of the Ad Hoc Committee, some delegations suggested deleting the words "without delay". At the informal consultations held during the seventh session of the Ad Hoc Committee, some delegations suggested adding the words "once all the legal proceedings are concluded" after the word "delay". One delegation suggested replacing the words "without delay" with the words "within a reasonable time".

[62] At the fourth session of the Ad Hoc Committee, some delegations raised concern about who should bear the cost associated with the repatriation of victims.

[63] At the fourth session of the Ad Hoc Committee, some delegations stated that there was a need to clarify the term "right of abode". For example, it was not clear whether it included right to transit or temporary residence. In this context, Mexico suggested replacing the word "had" with the word "has". At the informal consultations held during the seventh session of the Ad Hoc Committee, a similar discussion ensued. Many delegations expressed the view that the right of abode should be based on the victim's past right, which was easier to establish than the right any such victim might have on the date of return.

[64] At the fourth session of the Ad Hoc Committee, some delegations expressed the view that repatriation of the victims should be based on consent. General agreement was not reached regarding repatriation of the victims in the absence of such consent. In this context, bilateral and multilateral agreements should be encouraged. Some delegations also stated that special consideration should be given to repatriation of children. At the informal consultations held during the seventh session of the Ad Hoc Committee, one delegation suggested adding the following sentence at the end of this paragraph: "States Parties agree to facilitate the passage of such persons through their territories."

[65] At the fourth session of the Ad Hoc Committee, Mexico proposed new paragraphs 1 *bis* and 1 *ter* (see A/AC.254/5/Add.19). At the informal consultations held during the seventh session of the Ad Hoc Committee, a majority of delegations opposed the proposal.

[66] At the fourth session of the Ad Hoc Committee, it was agreed that the words "undue or unreasonable" should be placed in brackets.

[67] At its sixth session, the Ad Hoc Committee decided to use the text of article 13 of the draft Migrants Protocol as amended during that session (see A/AC.254/128/Add.2) as the basis for further discussion. Originally, this paragraph appeared as article 11 of the previous text (A/AC.254/4/Add.3/Rev.4) and was inserted as article 6, paragraph 3, in the present restructured text. Several delegations expressed the view that the paragraph should be moved to article 9, on international travel documents. At the informal consultations held during the seventh session of the Ad Hoc Committee, more delegations were in favour of retaining the paragraph in this article.

4. In order to facilitate the return of victims of such trafficking who are without proper documentation, the State Party of which such a victim is a national or in which he or she had the right of abode at the time of entry into the receiving State shall agree to issue, at the request of the receiving State, such travel documents or other authorization as may be necessary to enable the person to re-enter its territory.[68, 69]

III. Prevention, cooperation and other measures

Article 7[70]

Law enforcement measures

1. In addition to adopting the measures provided for in this article and pursuant to article 14 of this Protocol, law enforcement authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) Whether individuals have used or attempted to use altered or falsified documentation to cross an international border for the purpose of trafficking in persons;

(c) The methods used by groups for transporting victims of such trafficking under false identities, or with altered or falsified documentation, and the measures for detecting them; and

(d) Methods and means used for trafficking in persons, including recruitment, routes and links between and among individuals and groups engaged in such trafficking.

2. States Parties shall provide or strengthen training to prevent trafficking in persons for law enforcement, immigration and other relevant officials. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and

[68] At the informal consultations held during the seventh session of the Ad Hoc Committee, one delegation suggested that receiving States should verify the nationality claimed by victims before proceeding with the repatriation of such victims.

[69] At the fourth session of the Ad Hoc Committee, China suggested adding the following new paragraph after paragraph 4 of this article: "5. The receiving State of victims of trafficking shall provide necessary facilities for the return of victims." At the informal consultations held during the seventh session of the Ad Hoc Committee, several delegations opposed the proposal, stating that the allocation of costs was best left to the States Parties involved. One delegation suggested adding, as an alternative, the following sentence: "States Parties shall conclude agreements determining the means of implementing this article."

[70] At the informal consultations held during the seventh session of the Ad Hoc Committee, discussion of this article was postponed pending the finalization of the corresponding provisions in the draft Convention. Several delegations suggested that the title of this article did not match its content.

protecting the rights of the victims, including protecting the victims from the traffickers,[71] and should encourage cooperation with appropriate non-governmental organizations.[72]

Article 8[73]

Border measures[74]

1. Without prejudice to international commitments for the free movement of people, States Parties shall strengthen, to the extent possible, border controls as may be necessary to detect and prevent trafficking in persons, including by checking [persons'][75] travel or identity documents and, where appropriate, by boarding and inspecting vehicles and vessels, [with due respect for human rights].[76, 77]

2. States Parties shall[78] take legislative or other appropriate measures to prevent the means of transport operated by commercial carriers[79] from being used in the commission of offences covered by article 3 of this Protocol.[80]

3. Such measures shall include, where appropriate, the establishment, without prejudice to applicable international conventions, of the obligation that commercial carriers, including any transportation company or the owner or operator of any vessel or

---

[71] The words "including protecting the victims from the traffickers" were added by the authors of the restructured text. Article 9, paragraph 2, of the previous draft (see A/AC.254/4/Add.3/Rev.4), has been deleted because it is substantially the same as this paragraph. It read as follows: "Each State Party shall adopt such training and other measures as may be necessary to ensure that victims of such trafficking, who are detected being trafficked by means of legal or illegal migration receive appropriate protection from the traffickers."

[72] At the sixth session of the Ad Hoc Committee, several delegations expressed the view that discussion of this paragraph should be deferred, as it was covered by article 21 of the draft Convention.

[73] This article is based on the text proposed by the informal working group convened at the request of the Chairperson during the sixth session of the Ad Hoc Committee (see A/AC.254/L.110).

[74] At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on using "Border measures" as the title of this article.

[75] At the informal consultations held during the seventh session of the Ad Hoc Committee, a majority of delegations suggested deleting the word "persons'" in order to alleviate some of the concern expressed regarding possible human rights violations during the checking process.

[76] At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on adopting the text proposed by Mexico, amending option 2 of the previous text, which had been proposed by the European Union (see A/AC.254/4/Add.3/Rev.5).

[77] At the informal consultations held during the seventh session of the Ad Hoc Committee, several delegations expressed the view that human rights issues were covered under article 13. Belgium, supported by several delegations, suggested that paragraph 1 should state that it be without prejudice to article 5 on the status of the victim in the receiving States.

[78] At the sixth session of the Ad Hoc Committee, some delegations proposed that this provision not be obligatory.

[79] At the sixth session of the Ad Hoc Committee, some delegations expressed concern about placing obligations on common carriers. Several delegations suggested that tourist organizations and other related travel agencies should be included in this paragraph.

[80] Paragraphs 2-4 were proposed by France and the United States (see A/AC.254/L.107) at the sixth session of the Ad Hoc Committee.

vehicle, ascertain that all passengers travelling by land,[81] air or sea have a valid[82] passport and visa,[83] if required, or any other documentation necessary for legal[84] entry into the receiving State.

4. States Parties shall take the necessary measures, in conformity with their domestic law, to provide for sanctions[85] in cases of violation of the obligation set out in paragraph 3 of this article.[86, 87]

5. States Parties shall consider adopting measures that permit, in conformity with their domestic law,[88] the denial of entry or revocation of visas[89] of persons[90] implicated[91] in crimes covered by this Protocol.

Article 9

International travel documents

1. States Parties shall adopt such measures as may be necessary, in accordance with available means to ensure that travel or identity documents issued by them are of such quality that they cannot be easily misused and cannot readily be unlawfully altered, replicated [, falsified] or issued.[92]

---

81 At the informal consultations held during the seventh session of the Ad Hoc Committee, a majority of delegations preferred to use the word "land" to include all forms of land transportation, including rail. A few delegations expressed concern about the feasibility of requiring rail operators to check documents, because many routes included both domestic and international stops.

82 At the sixth session of the Ad Hoc Committee, many delegations expressed concern that common carriers had no resources or expertise to ascertain the authenticity of the documents (i.e. whether they have been forged or falsified). There was general agreement that using the word "valid" would require common carriers to check only for obvious defects on the surface of the documents, such as documents that were blank or had expired.

83 At the sixth session of the Ad Hoc Committee, several delegations suggested changing the words "passport and visa" to the words "travel documents".

84 At the sixth and seventh sessions of the Ad Hoc Committee, some delegations suggested deleting the word "legal".

85 At the sixth session of the Ad Hoc Committee, consensus was reached on replacing the word "penalties" with the word "sanction".

86 At the sixth session of the Ad Hoc Committee, Argentina suggested incorporating a provision on cooperation mechanisms (A/AC.254/L.99).

87 At the informal consultations held during the seventh session of the Ad Hoc Committee, a majority of delegations suggested deleting reference to specific sanctions in the previous text (see A/AC.254/4/Add.3/Rev.5). Some delegations opposed such a deletion. Some delegations suggested that a reference to imprisonment should be made in this paragraph.

88 At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on using the words "in conformity with their domestic law" rather than the words "in appropriate cases".

89 At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on substituting the words "denial of entry or revocation of visas" for the previous text (see A/AC.254/4/Add.3/Rev.5).

90 At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on deleting the reference to foreign officials.

91 At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on using the word "implicated". Two delegations were in favour of using the words "confirmed to be implicated", but a majority of the delegations opposed that proposal.

92 The changes to this paragraph were taken from article 12, paragraph 1, of the draft Migrants Protocol as agreed at the sixth session of the Ad Hoc Committee (A/AC.254/L.128/Add.2).

2. States Parties shall adopt such measures as may be necessary to ensure the integrity and to control the lawful creation, issuance, verification, use and recognition of travel or identity documents issued by or on behalf of the States Parties.[93]

Article 10[94]

Prevention of trafficking in persons

1. States Parties shall [endeavour to][95] establish comprehensive policies, programmes and other measures:

(a) To prevent and combat trafficking in persons; and

(b) To protect trafficked persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake [, as appropriate,][96] measures such as research, information and mass media campaigns and social and economic initiatives to prevent [and combat][97] trafficking in persons.[98]

3. Policies, programmes and other measures taken in accordance with this article should include cooperation with non-governmental organizations, other relevant organizations[99] or other elements of civil society.

---

[93] The changes to this paragraph were taken from article 12, paragraph 2, of the draft Migrants Protocol as agreed at the sixth session of the Ad Hoc Committee. Following the discussion of this paragraph, an informal working group on the draft Migrants Protocol submitted further changes, which have been incorporated into the text of that Protocol, pursuant to the instruction of the Chairperson. The proposal now reads:

"States Parties shall adopt such measures as may be necessary, in accordance with available means:

"(a) To ensure that travel or identity documents issued by them are of such quality that they cannot be easily misused and cannot readily be unlawfully altered, replicated, falsified or issued; and

"(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the States Parties and to prevent their unlawful creation, issuance and use."

[94] At the sixth session of the Ad Hoc Committee, consensus was reached on adopting the text drafted by an informal working group convened at the request of the Chairperson, as the basis for further discussion of this article (A/AC.254/L.113). Discussions of this text continued until the adjournment of the session and proposals up to that point are reflected in the footnotes that follow.

[95] At the sixth session of the Ad Hoc Committee, several delegations suggested deleting the square brackets.

[96] One delegation suggested adding the words "to the extent possible" or "within available means".

[97] At the sixth session of the Ad Hoc Committee, one delegation suggested deleting the words "as appropriate".

[98] At the sixth session of the Ad Hoc Committee, several delegations suggested that the words "and combat" should be added in order to be consistent with subparagraph (a) of paragraph 1.

[99] At the sixth session of the Ad Hoc Committee, Switzerland suggested that this paragraph should also refer to protecting trafficked persons from revictimization in order to be consistent with subparagraphs (a) and (b) of paragraph 1. Switzerland also suggested expanding the title accordingly.

At the sixth session of the Ad Hoc Committee, several delegations expressed the view that the words "other relevant organizations" should be clarified.

Article 11

Cooperation with non-States Parties

Option 1

States Parties are encouraged to[100] cooperate with non-States Parties to prevent and punish trafficking in persons and to protect and care for victims of such trafficking. To that end, the authorities of each State Party shall in appropriate cases[101] notify the authorities of a non-State Party whenever a victim of such trafficking who is a national of the non-State Party is in the territory of the State Party.

Option 2

This Protocol encourages States Parties to cooperate with non-States Parties on the basis of equality and reciprocity for the purpose of this Protocol.[102]

[*Article 12 was deleted.*][103]

IV. Final provisions

Article 13[104]

Savings clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law[105] and, in particular, where applicable, the 1951 Convention[106] and the 1967 Protocol[107] relating to the Status of Refugees.[108]

2. The application and interpretation of measures pursuant to this Protocol must be consistent with internationally recognized principles of non-discrimination.[109]

---

100 At the sixth session of the Ad Hoc Committee, there was general agreement to use the words "are encouraged to" instead of the word "shall".

101 At the sixth session of the Ad Hoc Committee, there was general agreement to insert the words "in appropriate cases" after the word "shall".

102 The text of this paragraph was proposed by China at the sixth session of the Ad Hoc Committee (A/AC.254/5/Add.13).

103 At the sixth session of the Ad Hoc Committee, it was agreed to delete article 12 of the restructured text, entitled "Stricter measures".

104 The text of this paragraph is based on article 5 of the draft Migrants Protocol.

105 At the sixth session of the Ad Hoc Committee, a majority of delegations expressed the view that references to international humanitarian law and international human rights law were essential. Some delegations suggested deleting the text after the words "international law". Alternatively, one delegation suggested making a reference to international law and keeping the references to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. A majority of delegations opposed those proposals.

106 United Nations, *Treaty Series*, vol. 189, No. 2545.

107 Ibid., vol. 606, No. 8791.

108 At the sixth session of the Ad Hoc Committee, some delegations proposed that a reference to bilateral and regional agreements should be added. A majority of delegations opposed that proposal.

109 At the sixth session of the Ad Hoc Committee, an informal working group convened at the request of the Chairperson submitted a text of the non-discrimination clause (A/AC.254/L.112). It was agreed to adopt the text with amendments submitted by Germany (A/AC.254/L.116).

Article 14

Other provisions

The provisions of articles [...] of the Convention shall also apply *mutatis mutandis* to this Protocol.

Article 15

Settlement of disputes[110]

1. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time [ninety days] shall, at the request of one of those Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may, at the time of [signature,] ratification [, acceptance] or [approval] of this Protocol, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party that has made such a reservation.

3. Any State Party that has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16

Signature, ratification, acceptance, approval, accession and reservations

1. This Protocol shall be open to all States for signature from [...] to [...] and thereafter at United Nations Headquarters in New York until [...].

2. The present Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

Option 1

[3. No reservations may be made in respect of any provision of this Protocol.]

[110] The text of articles 15-20 is identical to the text of the corresponding provisions of the draft Convention and is reproduced here in accordance with a decision made by the Ad Hoc Committee at its sixth session (A/AC.254/23) and without prejudice to their content, which is still under negotiation. Only necessary editorial changes have been made to the text. For issues related to these provisions, see the footnotes to articles 25, 26 and 27-30 of the draft Convention.

Option 2

[3. Reservations shall be subject to the provisions of the Vienna Convention on the Law of Treaties of 1969.[111]]

[4. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States Parties at the time of ratification, acceptance, approval or accession.]

[5. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.]

6. This Protocol is subject to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 17

Entry into force

1. The present Protocol shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the [...] instrument of ratification, acceptance, approval or accession.

2. For each State Party ratifying, accepting, approving or acceding to the Protocol after the deposit of the [...] instrument of such action, the Protocol shall enter into force on the thirtieth day after the deposit by such State of that relevant instrument.

Article 18

Amendment

1. A State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

[111] United Nations, *Treaty Series*, vol. 1155, No. 18232.

Article 19

Denunciation

A State Party may denounce the present Protocol by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 20

Languages and depositary

1. The Secretary-General of the United Nations is designated depositary of the present Protocol.

2. The original of the present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.